

## **REMARKS**

### **Status of the Claims**

Claims 1-12 are pending in the present application. Claims 5, 9, and 10 are withdrawn from consideration as directed to a non-elected invention. Claim 1 is amended to incorporate the elements of claim 3, now canceled. Claim 4 is amended to depend on a pending claim. Claim 7 is amended to cancel antigen-binding fragments. Claim 12 is new. Support for new claim 12 is found in original claim 4. The claims are amended without prejudice or disclaimer. No new matter is entered by way of this amendment.

### **Request for Rejoinder**

Claims 2, 4, 7, 8, 9, 10, and 11 all share the special technical feature set forth in claim 1. For the reasons described herein, Applicants respectfully submit that, at least, the elements described in claim 1 are not taught or suggested in the references cited in the present action. Accordingly, the anti-SARS virus monoclonal antibody described in claim 1 is a special technical feature. This special technical feature is incorporated into withdrawn claims 9 and 10. Since the cited references do not break the unity of invention, the Examiner is respectfully requested to rejoin, at least, claims 9 and 10 with claims 1, 2, 4, 7, 8, and 11.

### **Priority**

The Examiner states that Applicants need to provide certified English translations of the priority documents, (*i.e.*, Japanese Application No. 2003-373779, filed October 31, 2003, and Japanese Application No. 2004-034268, filed February 10, 2004), if Applicants desire to obtain the benefit of foreign priority, *see Office Action*, page 3. Certified translations of the priority documents are enclosed.

### **Information Disclosure Statement**

The Examiner states that he has not considered the Information Disclosure Statement (IDS) filed on April 28, 2006, since some of the references in the IDS were not in the English language and the IDS did not include a concise statement of relevancy of the non-English

references, as best understood by the individual designated in 37 C.F.R. § 1.56(c), *see Office Action*, page 3. Specifically, the Examiner has requested English translations of these documents, *see Office Action*, page 3.

Applicants submit that a concise explanation of the relevance of the non-English documents was provided in the International Search Report of PCT International Application No. PCT/JP2004/016099, filed October 29, 2004, which was submitted to the Office on April 28, 2006. This search report satisfies the relevancy requirement, *see MPEP 609.04(a)III*. Further, the journal articles cited by Applicants in the April 28, 2006, IDS, are also cited in the present Office Action, and, accordingly, were already considered by the Examiner. (*See Office Action*, page 5, which cites Che *et al.*, *J. First. Mil. Me. Univ.*, 2003, 23:640-642, (“Che A”), Che *et al.* *J. Clin. Microbiol.*, 2004, 42:2629-2635 (Che B) and Berry *et al.*, *J. Virol. Method.*, 2004, 120:87-96, (“Berry”). Applicants further note that the Examiner has not “lined through” the references of the IDS submitted on April 28, 2006. Applicants respectfully request that the Examiner indicate in the next Official Communication that the references have been considered.

### **Issues Under 35 U.S.C. § 112, First Paragraph, Enablement**

Claims 4 and 7 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly lacking enablement, *see Office Action*, pages 3-4. Specifically, the Examiner states that Applicants’ deposit statement on page 27 in the originally filed application is insufficient under U.S. Practice because it is not clear whether the deposited material is i) currently publicly available if required by the Commissioner, ii) if availability will be unrestricted upon issuance of the U.S. Patent, iii) if the deposits will be maintained for the required period, iv) if a viability statement has been provided, and v) an assurance that deposits will be replaced, if necessary, *see Office Action*, page 4. The Examiner further states that the present application should be amended to include the identifying information set forth in 37 CFR § 1.809(d), *see Office Action*, page 4.

Applicants submit that the strain was deposited in accordance with the Budapest Treaty with the International Patent Organism Depository (IPOD) and the National Institute of Advanced Industrial Science and Technology (AIST), which are recognized as official

depository authorities in Japan. (*See*, the application as originally filed at, for instance, page 27, and MPEP § 2405).

The above depository affords permanence of the deposits and ready accessibility thereto by the public if a patent is granted, under conditions which assure (a) that access to the culture will be available during pendency of said patent application to one determined by the Commissioner to be entitled thereto under 37 C.F.R. 1.14 and 35 U.S.C. 122, and (b) that the above-mentioned cultures will be available to the public without restriction upon the granting of a patent.

The undersigned hereby assures the availability of said cultures to the public through the above depository and in the event that any of the strains should become non-viable, mutate or inadvertently be destroyed, the undersigned will replace the strains at the above-mentioned depository. The undersigned further assures that all restrictions on the availability to the public of the above-mentioned cultures will be irrevocably removed upon the granting of a patent.

The above-mentioned deposits will be maintained (1) for thirty (30) years from the date of deposit, (2) for five (5) years after the last request for the deposit at the depository, or (3) for the enforceable life of any patent which issues from the above-identified application, whichever is longer.

Applicants further submit that the original application includes the information required under 37 CFR 1.809(d). In particular, the accession numbers for the deposits are described on page 27 of the application as originally filed. The date of the deposit, *i.e.*, October 18, 2004, is also described on page 27. The deposited hybridomas are described in Example 1 on pages 25-27 of the instant application. The name and address of the depository is also described on page 27, lines 10-12. Accordingly, Applicants believe they have complied with the requirements under 37 CFR 1.809(d).

Based upon the forgoing, reconsideration and withdrawal of the rejection of claims 4 and 7 as lacking enablement support is respectfully requested.

**Issues Under 35 U.S.C. § 102, Anticipation**

*Berry*

Claims 1-2, 6, 8, and 11 are rejected under 35 U.S.C. § 102(a) as allegedly anticipated by Berry, *see Office Action*, page 5. Berry was published in June 2004, *see Office Action*, page 5. The effective filing of the instant application is October 29, 2004. Accordingly, as the Examiner noted, Berry is prior art under 35 USC 102(a). Applicants provide herewith a certified translation of Japanese Application No. 2004-034268, filed February 10, 2004, and Japanese Application No. 2003-373779, filed October 31, 2003, which filing dates are prior to the publication date of Berry. Accordingly, Applicants submit that Berry is not a reference against the instant claims. Withdrawal of the rejection is respectfully requested.

*Che A*

Claims 1-3, 6, 8, and 11 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Che A as evidenced by Marra *et al.*, *Science*, 2003, 300:1399-1404, *see Office Action*, pages 5-6. According to the Examiner, Che A discloses several isolated monoclonal antibodies against the nucleoprotein of SARS related coronavirus, *see Office Action*, page 5. The Examiner further states that the precise nucleic acid sequence and amino acid sequence of the N protein is not expressly described in Che A, *see Office Action*, page 6. However, the Examiner alleges that the recombinant N protein is provided by University of Hong Kong, *see Office Action*, page 6. The Examiner further states that the nucleic acid sequence and protein sequence of the N protein disclosed by the University of Hong Kong are the same as the one cited in claim 3-4 in light of the teaching of Marra, *see Office Action*, page 6.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993)

Applicants submit that Che A does not teach or suggest all of the elements of the instant claims as evidenced by Marra. Specifically, Applicants submit that Che A fails to describe SEQ

ID NO: 1. The Examiner states that Che A teaches that the recombinant N protein is provided by the University of Hong Kong, *see Office Action*, page 6. The Examiner further states that the nucleic acid sequence from the University of Hong Kong are the same as the one cited in claims 3-4 in light of the teaching by Marra. Che A does not appear to describe that the N protein was provided by the University of Hong Kong. Further, Marra teaches that the virus used therein was isolated from a specimen of a fatal SARS case belonging to the original case cluster from Toronto, Canada, *see* page 1399, left column. Accordingly, Applicants submit that the recombinant N protein described in Che A is not necessarily the same as the sequences described in the instant claims.

Based upon the foregoing, the claims are not anticipated by Che A and Applicants respectfully request withdrawal of the rejection.

*Che B*

Claims 1-2, 6, 8, and 11 are rejected under 35 U.S.C. § 102(a) as allegedly anticipated by Che B, *see Office Action*, page 5. Che B was published in June 2004. As noted above, the effective filing of the instant application is October 29, 2004. Accordingly, as the Examiner stated, Che B is prior art under 35 USC 102(a). As noted above, Applicants provide herewith a certified translation of Japanese Application No. 2004-034268, filed February 10, 2004, and Japanese Application No. 2003-373779, filed October 31, 2003, which filing dates are prior to the publication date of Che B. Accordingly, Applicants submit that Che B is not a reference against the instant claims. Withdrawal of the rejection is respectfully requested.

Application No. 10/577,310  
Amendment dated: June 24, 2009  
Reply to Office Action of March 2, 2009

Docket No.: 0760-0354PUS1

### **CONCLUSION**

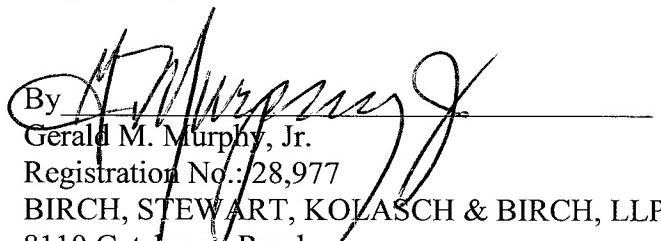
In view of the above amendment and remarks, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Linda T. Parker Reg. No. 46,046 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

JUL 02 2009  
Dated:

Respectfully submitted,

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